

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WILLIAM K. KIGER, II

Plaintiff,

v.

ALLEGHENY COUNTY AIRPORT  
AUTHORITY, and STEPHANIE L.  
SARACCO,

Defendants.

**2:04cv1388  
Electronic Filing**

Judge David S. Cercone  
Magistrate Judge Lisa Pupo Lenihan

**MEMORANDUM ORDER**

Plaintiff's Complaint was received by the Clerk of Court on September 13, 2004, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Document No. 16) filed on November 29, 2005, recommended that Defendants' Motion to Dismiss (Document No. 9) be granted in part and denied in part, and Defendants' Motion to Dismiss relating to judicial estoppel be converted to a Motion for Summary Judgment and be denied. Service was made on all counsel of record. The parties were informed that in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, they had ten (10) days to file any objections. No objections have been filed. After review of the pleadings and the documents in this case, together with the Report and Recommendation, the following Order is entered:

**AND NOW**, this 13<sup>th</sup> day of January, 2006;

**IT IS ORDERED** that Defendants' Motion to Dismiss (Document No. 9) is granted in part and denied in part. Plaintiff's § 1983 claims for Due Process, Equal Protection and the Ninth Amendment and his state law claims for breach of contract, violation of the Local Agency Act, and wrongful discharge are dismissed. The motion is denied as to

plaintiff's claim(s) for violation of the Americans With Disabilities Act and punitive damages; the portion of the motion seeking dismissal based on judicial estoppel is converted to a motion for summary judgment and is denied. The Report and Recommendation (Document No. 16) of Magistrate Judge Lenihan, dated November 29, 2005, is adopted as the Opinion of the Court.

s/ David Stewart Cercone  
David Stewart Cercone  
United States District Judge

cc: The Honorable Lisa Pupo Lenihan  
United States Magistrate Judge

Falco A. Muscante, Esquire  
Petraglia & Muscante  
304 Ross Street  
7th Floor  
Pittsburgh, PA 15219

John K. Gisleson, Esquire  
Sarah E. Diedrich, Esquire  
Schnader, Harrison, Segal & Lewis  
120 Fifth Avenue  
Suite 2700, Fifth Avenue Place  
Pittsburgh, PA 15222-3001

Thomas P. McGinnis, Esquire  
Karin M. Romano, Esquire  
Thomas, Thomas & Hafer  
One Oxford Center  
301 Grant Street